

S. 2857

IN THE SENATE OF THE UNITED STATES

APRIL 7 (legislative day, FEBRUARY 6), 1978

Mr. DeCONCINI introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To clarify and revise various provisions of title 28 of the United States Code relating to the judiciary and judicial procedure regarding judicial review of international trade matters, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Customs Courts Act of
4 1978".

TITLE I—PURPOSE

DECLARATION OF PURPOSE

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7 SEC. 101. The Congress declares that the purposes of this
8 Act are (1) to provide for a comprehensive system of judicial
9 review of matters directly affecting imports, utilizing, wher-
10 ever possible, the specialized expertise of the United States
11 Customs Court and Court of Customs and Patent Appeals,

1 and the opportunity for ensuring uniformity afforded by the
2 national jurisdiction of these courts; (2) to prevent juris-
3 dictional conflicts in civil actions directly affecting imports
4 due to the present ill-defined division of jurisdiction between
5 the district courts and the customs courts; (3) to provide
6 expanded opportunities for judicial review of actions directly
7 affecting imports; and, (4) to grant to the customs courts
8 plenary powers possessed by other courts created under
9 article III of the Constitution.

10 TITLE II—COMPOSITION OF THE CUSTOMS
11 COURT AND ASSIGNMENT OF JUDGES TO
12 OTHER COURTS.

13 SEC. 201. Section 251 of title 28, United States Code, is
14 amended by striking out the first and second paragraphs of
15 such section and inserting in lieu thereof the following:

16 “The President shall appoint, by and with the advice
17 consent of the Senate, nine judges who shall constitute a
18 court of record known as the United States Customs Court.
19 Such court is hereby declared to be a court established under
20 article III of the Constitution of the United States.

21 “The President shall designate one of the judges, under
22 seventy years of age, to be the chief judge of the court. The
23 judge so designated shall continue to serve as chief judge
24 until he reaches the age of seventy and a new chief judge
25 is designated.”.

1 SEC. 202. (a) Subparagraph (b) of section 293 of title
 2 28, United States Code, is amended by striking out all that
 3 appears after the word “duties”, and inserting in lieu thereof
 4 the following: “in any circuit, either in a court of appeals or
 5 district court, upon presentation of a certificate of necessity by
 6 the chief judge or circuit justice of the circuit wherein the
 7 need arises.”.

8 (b) Subparagraph (d) of section 293 of title 28,
 9 United States Code, is amended so as to read as follows:

10 “(d) The chief judge of the Customs Court may, upon
 11 presentation to him by the chief judge of the Court of Cus-
 12 toms and Patent Appeals or the chief judge of the Court
 13 of Claims of a certificate of necessity, designate and assign
 14 temporarily any judge of the Customs Court to serve as a
 15 judge of the Court of Customs and Patent Appeals or the
 16 Court of Claims.”.

17 TITLE III—JURISDICTION OF THE 18 CUSTOMS COURT

19 SEC. 301. Sections 1581 and 1582 of title 28, United
 20 States Code, are repealed.

21 SEC. 302. Chapter 95 of title 28, United States Code,
 22 is amended by inserting the following new provisions:

“Sec.

“1581. Questions involving imports.

“1582. Powers generally.

“1583. Final agency action.

“1584. Appraisal and classification.

"1585. Exclusion of goods from entry or delivery.

"1586. Charges or exactions.

"1587. Refusal to pay a claim for drawback.

"1588. Liquidation or reliquidation of an entry or a modification thereof.

"1589. Refusal to reliquidate an entry.

"1590. Section 516 of the Tariff Act of 1930, as amended.

"1591. Civil penalties, forfeitures, suits to recover on a bond and recovery of customs duties.

"1592. Set-offs, demands, counterclaims.

"1593. Cure of defects.

1 *"The Customs Court shall possess exclusive jurisdiction,*
2 *except as otherwise provided by law, over all civil actions*

3 **"§ 1581. Questions involving imports**

4 "The Customs Court shall possess exclusive jurisdiction,
5 except as otherwise provided by law, over all civil actions
6 against the United States or against any officer or agency
7 thereof directly affecting imports which arise under the
8 Constitution, laws, treaties of the United States or an Execu-
9 tive agreement executed by the President of the United
10 States or under an Executive order of the President.

11 "This section does not confer jurisdiction upon the Cus-
12 toms Court to entertain a civil action in which jurisdiction is
13 precluded by the terms of a provision of this chapter or of
14 any other law which specifically confers jurisdiction only
15 over certain types of civil actions belonging to the same
16 category.

17 "Nothing in this section shall be construed to create a
18 cause of action, or to permit the maintenance of a suit not
19 otherwise authorized by law.

1 “Nothing in this section shall affect limitations on judi-
2 cial review or the power or duty of the court to dismiss any
3 action or to deny relief on any other appropriate legal or
4 equitable grounds.

5 **“§ 1582. Powers generally**

6 “The Customs Court shall possess all the powers in law
7 and equity of, or as conferred by statute upon, a district court
8 of the United States. The court, and each judge thereof,
9 shall possess all the powers of a district court for preserving
10 order, compelling the attendance of witnesses, and the pro-
11 duction of evidence.

12 “This section shall not be construed as conferring upon
13 the Customs Court the power to convene a jury.

14 **“§ 1583. Final agency action**

15 “(a) The Customs Court shall possess exclusive juris-
16 diction, except as otherwise provided by law, to review final
17 agency action of any agency of the United States which
18 directly affects imports into the United States.

19 “For purposes of this section, the terms “agency”,
20 “agency action”, and “final agency action” are utilized in
21 the same manner as those terms are utilized in sections 551
22 and 704 of title 5, United States Code.

23 “Nothing in this section shall be construed to create a
24 cause of action, or to permit the maintenance of a suit not
25 otherwise permitted by law.

1 “Nothing in this section shall affect limitations on judi-
2 cial review or the power or duty of the court to dismiss any
3 action or to deny relief on any other appropriate legal or
4 equitable grounds.

5 “(b) The Customs Court shall possess exclusive juris-
6 diction over any civil action involving a final decision of the
7 International Trade Commission under sections 201 of the
8 Antidumping Act and 303 of the Tariff Act of 1930, as
9 amended.

10 “(c) The Customs Court shall possess exclusive juris-
11 diction to review advice, findings, recommendations, or deter-
12 minations of the International Trade Commission pursuant
13 to sections 131, 201, 203, 301, 406, and 503 of the Trade
14 Act of 1974, and 22 of the Agricultural Adjustment Act,
15 as amended, after the decision of the President has become
16 final.

17 “(d) After the decision of the President has become
18 final, the Customs Court shall possess exclusive jurisdiction
19 to review actions of the Office of the Special Trade Repre-
20 sentative pursuant to section 301 of the Trade Act of 1974
21 solely for the purposes of determining the procedural regu-
22 larity of those actions.

23 “(e) The Customs Court shall not possess jurisdiction
24 of—

1 “(i) any civil or criminal action arising under the
2 antitrust laws of the United States;

3 “(ii) any civil or criminal action arising under
4 the Shipping Act of 1916, as amended;

5 “(iii) any action relating solely to labor-
6 management relations, actions affecting personnel, or
7 actions alleged to be in violation of any statute forbid-
8 ding discrimination in employment;

9 “(1) arising solely under the Freedom of Infor-
10 mation Act or the Privacy Act;

11 “(v) any action arising under section 305 of the
12 Tariff Act of 1930, as amended, or section 232 of the
13 Trade Expansion Act of 1962, as amended; or

14 “(vi) any action involving a function vested by
15 law in the Department of Energy, including but not
16 limited to the Emergency Petroleum Allocation Act.

17 “(f) Neither the Customs Court nor any other court
18 shall possess jurisdiction to review—

19 “(i) a discretionary decision of the President or
20 his delegate pursuant to the authority granted to him
21 by any law relating to international trade;

22 “(ii) any ruling or internal advice relating to
23 classification, valuation, rate of duty, marking, restricted
24 merchandise, entry requirements, drawback, vessel re-
25 pairs, and the like issued by the Secretary of the

1 Treasury or his or her delegate to members of the
2 public or members of the Customs Service except with
3 respect to section 315 (d) of the Tariff Act of 1930,
4 as amended.

5 “(g) Nothing in this section shall be construed to create
6 a cause of action, or to permit the maintenance of a suit not
7 otherwise authorized by law.

8 **“§ 1584. Appraisal and classification**

9 “The Customs Court shall possess exclusive jurisdiction
10 of civil actions which involve the appraised value or the
11 classification and rate and amount of duties chargeable upon
12 imports.

13 **“§ 1585. Exclusion of goods from entry or delivery**

14 “Except as otherwise provided by law, the Customs
15 Court shall possess exclusive jurisdiction of civil actions
16 which involve the exclusion of imports from entry or delivery
17 under any provision of the customs laws or the exclusion or
18 required delivery of imports pursuant to the terms of an
19 entry bond.

20 **“§ 1586. Charges or exactions**

21 “(a) Except as otherwise provided by law, the Customs
22 Court shall possess exclusive jurisdiction of civil actions
23 which involve the imposition of any charge, tax, fee, or
24 other exaction imposed upon importation.

1 “(b) Except as otherwise provided by law, the Customs
 2 Court shall possess exclusive jurisdiction of civil actions
 3 which involve a decision of the Secretary of the Treasury,
 4 imposing any fee, charge, tax, or other exaction, other than
 5 customs duties, upon any vessel, aircraft, or other instru-
 6 mentality of international commerce which enters into the
 7 customs territory of the United States.

8 **“§ 1587. Refusal to pay claim for drawback**

9 “The Customs Court shall possess exclusive jurisdiction
 10 of civil actions involving a refusal to pay a claim for draw-
 11 back.

12 **“§ 1588. Liquidation or reliquidation of an entry or modi-**
 13 **fication thereof**

14 “The Customs Court shall possess exclusive jurisdiction
 15 of civil actions involving the liquidation or reliquidation of
 16 an entry or a modification thereof.

17 **“§ 1589. Refusal to reliquidate an entry**

18 “The Customs Court shall possess exclusive jurisdiction
 19 of all civil actions involving the refusal to reliquidate an entry
 20 under section 520 (c) of the Tariff Act of 1930, as amended.

21 **“§ 1590. Section 516 of the Tariff Act of 1930, as amended**

22 “The Customs Court shall possess exclusive jurisdiction
 23 over all civil actions instituted pursuant to section 516 of the
 24 Tariff Act of 1930, as amended.

1 **“§ 1591. Civil penalties, forfeitures, suits to recover on a**
2 **bond, and recovery of customs duties**

3 “(a) The Customs Court shall possess jurisdiction upon
4 transfer from a district court, over any civil action involving
5 imports in international trade instituted by the United States
6 to (1) recover a civil penalty or forfeiture imposed under any
7 revenue statute administered by the Customs Service, or (2)
8 to recover upon a bond, relating to the importation of mer-
9 chandise, required by the laws of the United States or by the
10 Secretary of the Treasury, or (3) to recover customs duties.

11 “(b) A defendant or defendants may transfer a case
12 referred to in subparagraph (a) of this section by filing in
13 the district court in which the action is pending a notice of a
14 desire to transfer.

15 “(c) The notice of desire to transfer shall be filed within
16 thirty days after the service upon defendant of a copy of the
17 complaint.

18 “(d) (1) Upon receipt of a notice of a desire to transfer,
19 the district court shall determine whether the action is of the
20 type defined in subparagraph (a) of this section. If so, the
21 district court shall order the transfer.

22 “(2) If the case is of the type referred to in para-
23 graph (a) (1) of this section, the United States shall be

1 afforded an opportunity to object to the transfer and, the
2 case shall be transferred only if the district court determines
3 that the case involves a substantial question, other than the
4 amount of any penalty involved, as to the proper classifica-
5 tion or valuation of imported merchandise or the rate of
6 duty imposed. The decision of the district court to transfer
7 or not to transfer a case shall be final and conclusive and
8 shall not be reviewable on appeal or otherwise, except on
9 appeal from a final judgment on the merits.

10 “(e) Within ten days after the issuance of an order of
11 transfer, the defendant or defendants shall file copies of all
12 pleadings and documents with the Customs Court.

13 “(f) Upon receipt of the copies of the pleadings and
14 documents, the action shall be heard by the Customs Court,
15 sitting without a jury, and shall proceed in the district in
16 which the action was first instituted, as if the case had been
17 instituted in the Customs Court in the first instance.

18 “(g) In any suit transferred to the Customs Court
19 pursuant to this section, the provisions of sections 2461,
20 2462, 2463, 2464, and 2465 of title 28, United States Code,
21 shall be applicable where relevant.

22 **“§ 1592. Set-offs, demands, and counterclaims**

23 “The Customs Court shall have jurisdiction to render

1 judgment upon any set-off, demand, or counterclaim, which
2 arises out of an import or export related transaction, by the
3 United States against any plaintiff in such court.

4 **“§ 1593. Cure of defects**

5 “(a) If a case within the exclusive jurisdiction of the
6 Customs Court is filed in a district court, the district court
7 shall, if it be in the interest of justice, transfer such case to
8 the Customs Court, where the case shall proceed as if it had
9 been filed in the Customs Court on the date it was filed in
10 the district court.

11 “(b) If a case within the exclusive jurisdiction of a
12 district court or a court of appeals is filed in the Customs
13 Court, the Customs Court shall, if it be in the interest of
14 justice, transfer such case to the appropriate district court or
15 court of appeals where the case shall proceed as if it had
16 been filed on the date in which it was filed in the Customs
17 Court.”.

18 **TITLE IV—CUSTOMS COURT PROCEDURE**

19 **SEC. 401.** (a) Sections 2631, 2632, 2633, 2635, and
20 2637 of title 28, United States Code, are repealed.

21 (b) Section 2634 of title 28, United States Code, is
22 redesignated as section 2638.

23 (c) Section 2636 of title 28, United States Code, is
24 redesignated as section 2642.

1 (d) Sections 2638 and 2639 of title 28, United States
 2 Code, are redesignated as sections 2644 and 2645, respec-
 3 tively.

4 SEC. 402. Chapter 169 of title 28, United States Code,
 5 is amended by inserting the following new provisions:

"Sec.

"2631. Persons entitled to commence a civil action.

"2632. Commencement of a civil action.

"2633. Customs Court procedure and fees.

"2634. Filing of official documents.

"2635. Time for commencement of action.

"2636. Exhaustion of administrative remedies.

"2637. New grounds in support of a civil action.

"2638. Notice.

"2639. Burden of proof; evidence of value.

"2640. Scope and standard of review.

"2641. Witnesses; inspection of documents.

"2642. Analysis of imported merchandise.

"2643. Relief.

"2644. Decisions; findings of fact and conclusions of law; effect of
 opinions.

"2645. Retrial or rehearing.

"2646. Precedence of American manufacturer, producer, or wholesaler
 cases.

6 **"§ 2631. Persons entitled to commence a civil action**

7 " (a) Except in those civil actions specified in sections
 8 1584, 1585, 1587, 1588, 1589, 1590, and section 516 of
 9 the Tariff Act of 1930, as amended, a civil action may be
 10 instituted in the Customs Court by any person adversely
 11 affected or aggrieved (within the meaning of section 702
 12 of title 5, United States Code) by the agency action (as
 13 defined in section 551 (13) of title 5, United States Code),
 14 which is the subject of the suit. Nothing in this subsection
 15 shall be construed to create a cause of action, or to permit
 16 the maintenance of a suit not otherwise authorized by law.

1 “(b) By leave of the court, any person who would be
2 adversely affected or aggrieved by a decision in a civil
3 action pending in the Customs Court may intervene in that
4 action.

5 **“§ 2632. Commencement of a civil action**

6 “(a) All civil actions shall be instituted in the Cus-
7 toms Court by the filing of a complaint in the form, manner,
8 and style and with the content prescribed in rules adopted
9 by the court.

10 “(b) The Customs Court may prescribe by rule that a
11 complaint transmitted by registered or certified mail prop-
12 erly addressed to the clerk of the court with the proper
13 postage affixed and return receipt requested, shall be deemed
14 filed as of the date of postmark.

15 **“§ 2633. Customs Court procedure and fees**

16 “(a) There shall be a filing fee payable upon com-
17 mencing an action. The amount of the fee shall be fixed by
18 the Customs Court but shall be not less than \$5 nor more
19 than the filing fee for commencing a civil action in a United
20 States district court. The Customs Court may fix all other
21 fees to be charged by the clerk of the court.

22 “(b) The Customs Court shall provide by rule for
23 pleadings and other papers, for their amendment, service,
24 and filing, for consolidations, severances, and suspensions of
25 cases, and for other procedural matters.

1 “(c) All pleadings and other papers filed in the Customs
2 Court shall be served on all the adverse parties in accordance
3 with the rules of the court. When the United States is an
4 adverse party, service of the summons shall be made upon
5 the Attorney General and the relevant Government official
6 or officials or his or her designee or designees.

7 **“§ 2634. Filing of official documents**

8 “(a) Upon service of the complaint on the Secretary
9 of the Treasury or his or her designee in a civil action in
10 which the denial, in whole or in part, of a protest under the
11 Tariff Act of 1930, as amended, is a precondition to the in-
12 stitution of the civil action, the appropriate customs officer
13 shall forthwith transmit the following items, if they exist, to
14 the United States Customs Court: (1) consumption or other
15 entry; (2) commercial invoice; (3) special customs in-
16 voice; (4) copy of protest; (5) copy of denial of protest in
17 whole or in part; (6) importer’s exhibits; (7) official
18 and/or other representative samples, and (8) any official
19 laboratory reports. If any of these items do not exist in a
20 particular case, an affirmative statement to that effect shall
21 be transmitted to the court.

22 “(b) Upon service of the complaint on the Secretary
23 of the Treasury or his designee in an action contesting one
24 of the determinations set forth in section 516 (d) (A) of the
25 Tariff Act of 1930, as amended, the Secretary or his designee
26 shall forthwith transmit to the United States Customs Court

1 the official record of the civil action, as provided in section
2 2112 of title 28, United States Code. For purposes of this
3 paragraph, all relevant rules promulgated pursuant to sec-
4 tion 2072 and paragraphs (a) through (c) of section 2112
5 of title 28, United States Code, shall be applicable to the
6 Customs Court.

7 “(c) Upon service of the complaint on the United States
8 International Trade Commission or its designee in an action
9 contesting one of the determinations set forth in section
10 516 (d) (B) (1) of the Tariff Act of 1930, as amended, the
11 Commission or its designee shall forthwith transmit to the
12 United States Customs Court, the determination, the reasons
13 or bases therefor, the transcript of any hearing, and all in-
14 formation developed in connection with the investigation.

15 “(d) Upon service of the complaint on the United
16 States International Trade Commission or its designee in
17 an action contesting one of the determinations set forth in
18 section 516 (d) (B) (2) of the Tariff Act of 1930, as
19 amended, the Commission or its designee shall forthwith
20 transmit to the United States Customs Court the record,
21 as provided in paragraphs (a) through (c) of section 2112
22 of title 28, United States Code. For purposes of this para-
23 graph, all relevant rules prescribed pursuant to sections 2072
24 and 2112 of title 28, United States Code, shall be applicable
25 to the Customs Court.

1 **“§ 2635. Time for commencement of action**

2 “(a) A civil action instituted pursuant to sections 1584,
3 1585, 1586, 1587, 1588, and 1589 of title 28, United States
4 Code, shall be barred unless a complaint is filed, in accord-
5 ance with the rules of the Customs Court, within—

6 “(1) two years after the date of mailing of notice
7 of denial, in whole or in part, of a protest pursuant to
8 the provisions of section 515 (a) of the Tariff Act of
9 1930, as amended, or

10 “(2) if no notice is mailed within the two-year
11 period specified in section 515 (a) of the Tariff Act of
12 1930, as amended, two years after the date of the
13 expiration of the two-year period specified in section
14 515 (a) of the Tariff Act of 1930, as amended, or

15 “(3) if a notice is mailed after the expiration of the
16 two-year period specified in section 515 (a) of the Tariff
17 Act of 1930, as amended, two years after either the
18 expiration of the two-year period or the mailing of the
19 notice of denial, or

20 “(4) two years after the date of denial of a protest
21 by operation of law pursuant to the provisions of section
22 515 (b) of the Tariff Act of 1930, as amended.

23 “(b) An action over which the Customs Court possesses
24 jurisdiction under section 1590 of title 28, United States
25 Code, is barred unless commenced within thirty days after

1 the date of mailing of a notice transmitted pursuant to sec-
 2 tion 516 (c) of the Tariff Act of 1930, or, if the action is
 3 instituted pursuant to section 516 (d) of the Tariff Act of
 4 1930, as amended, within thirty days of the publication of
 5 the notice specified in that paragraph.

6 “(c) An action instituted pursuant to section 1581 or
 7 1583 (a) of title 28, United States Code is barred unless
 8 commenced within two years after the right of action first
 9 accrues.

10 “(d) An action over which the Customs Court possesses
 11 jurisdiction under paragraph (c) or (d) of section 1583 of
 12 title 28, United States Code, is barred unless commenced
 13 within thirty days of the announcement by the President of
 14 his final decision.

15 **“§ 2636. Exhaustion of administrative remedies**

16 “(a) A civil action may be instituted within the juris-
 17 diction conferred by section 1584, 1585, 1586, 1587, 1588,
 18 or 1589 of title 28, United States Code, only by a person
 19 whose protest pursuant to section 515 of the Tariff Act of
 20 1930, as amended, has been denied in whole or in part. All
 21 liquidated duties or exactions shall have been paid at the
 22 time the action is filed.

23 “(b) A suit may be instituted pursuant to section 516
 24 of the Tariff Act of 1930, as amended, only by a person who
 25 has first exhausted the procedures specified in that section.

1 “(c) In all other cases, the Customs Court, where ap-
 2 propriate, shall require the exhaustion of administrative
 3 remedies.

4 “(d) In extraordinary circumstances, stated in writing
 5 and supported by oath or affirmation, any person subject
 6 to an administrative proceeding referenced in subsection
 7 (a) or (b) of this section, who has a right of appeal to
 8 the Customs Court from the agency final action in that
 9 proceeding, may petition the Customs Court for preliminary
 10 injunctive relief. The Customs Court may, after hearing,
 11 and upon a determination that the petitioner will otherwise
 12 suffer substantial irreparable injury, and the public interest
 13 so requires, enter an order designed to protect the interests
 14 of the parties pending completion of the administrative pro-
 15 ceeding. Such order may include a requirement that the
 16 administrative proceeding be given priority for the agency
 17 over other such proceedings. Financial loss shall not con-
 18 stitute irreparable injury within the meaning of this sub-
 19 section.

20 **“§ 2637. New grounds in support of a civil action**

21 “Where the denial, in whole or in part, of a protest
 22 under section 515 of the Tariff Act of 1930, as amended,
 23 is a precondition to the institution of a civil action in the
 24 Customs Court, the court, by rule, may consider any new
 25 ground in support of the civil action if the new ground (1)

1 applies to the same merchandise that was the subject of the
2 protest; and (2) is related to the same administrative deci-
3 sion or decisions listed in section 514 of the Tariff Act of
4 1930, as amended, that was or were contested in the
5 protest.

6 **“§ 2639. Burden of proof; evidence of value**

7 “In any matter in the Customs Court except an action
8 transferred to the Customs Court pursuant to section 1593
9 of this title:

10 “(1) The decision of the Secretary of the Treasury,
11 or his delegate, is presumed to be correct. The burden to
12 prove otherwise shall rest upon the party challenging a
13 decision.

14 “(2) Where the value of merchandise is in issue:

15 “(A) (i) Reports or depositions of consuls, customs
16 officers, and other officers of the United States and depo-
17 sitions and affidavits of other persons whose attendance
18 cannot reasonably be had, which are based upon, and
19 which recite, operative facts, may be admitted into evi-
20 dence when served upon the opposing party in accord-
21 ance with the rules of the court.

22 “(ii) No affidavit of the type specified in the pre-
23 ceding paragraph shall be admitted into evidence by the
24 plaintiff unless the plaintiff introduces evidence to the
25 effect that the affiant has made available to the Secretary

1 of the Treasury or his or her delegate adequate means
 2 by which the facts contained in the affidavit can be
 3 verified.

4 “(iii) In the absence of unusual circumstances,
 5 mere residence abroad shall not be a sufficient dem-
 6 onstration that the affiant’s attendance cannot reasonably
 7 be had.

8 “(B) Price lists and catalogs may be admitted in
 9 evidence when duly authenticated, relevant, and
 10 material.

11 “(C) The value of merchandise shall be determined
 12 from the evidence in the record and that adduced at trial
 13 whether or not the merchandise or sample thereof is
 14 available for examination.

15 **“§ 2640. Scope and standard of review**

16 “(a) Except for civil actions governed by subsections
 17 (d) (3) (A) and (i) of section 516 of the Tariff Act of
 18 1930, as amended, any civil action in which the issue in-
 19 volves the following matters under the indicated sections
 20 of title 28, United States Code:

21 “(1) the appraised value of merchandise (section
 22 1584) ;

23 “(2) the classification and rate and amount of
 24 duties, fees, or taxes chargeable (section 1584) ;

25 “(3) all charges or exactions (except countervail-

1 ing duties imposed under section 303 of the Tariff Act
2 of 1930, as amended, and antidumping duties imposed
3 pursuant to the Antidumping Act, 1921, as amended)
4 imposed upon imported articles whether imposed by the
5 Secretary of the Treasury or otherwise (section 1586) ;

6 “(4) the exclusion of merchandise from entry or
7 delivery (section 1585) ;

8 “(5) the liquidation or reliquidation of an entry or
9 a modification thereof (section 1588) ;

10 “(6) the refusal to pay a claim for a drawback
11 (section 1587) ; or

12 “(7) the refusal to reliquidate an entry under sec-
13 tion 520 (c) of the Tariff Act of 1930, as amended
14 (section 1589) ;

15 the Customs Court shall determine the matter upon the basis
16 of the record made in the court. Suits challenging decisions
17 to impose countervailing or antidumping duties upon a class
18 or kind of merchandise shall be subject to review as pro-
19 vided in subsection (c) of this section. Suits challenging the
20 imposition of countervailing or antidumping duties upon
21 particular merchandise shall be determined upon the basis
22 of the record made before the court.

23 “(b) In all other cases, except those governed by sub-
24 sections (d) (3) (A) and (i) of section 516 of the Tariff
25 Act of 1930, as amended, or subsection (c) of this section,

1 the scope of review shall be as provided in section 706 of
2 title 5, United States Code.

3 “(c) In cases other than those governed by subsection
4 (i) of section 516 of the Tariff Act of 1930, as amended,
5 involving decisions of the Secretary of the Treasury under
6 section 303 of the Tariff Act of 1930, as amended, or section
7 201 of the Antidumping Act, 1921, as amended, or of
8 United States International Trade Commission, the stand-
9 ard of review shall be as specified in section 706 (1) and
10 706 (2) (a) through (d), inclusive, of title 5, United States
11 Code.

12 **“§ 2641. Witnesses; inspection of documents**

13 “(a) Where appropriate in any civil action in the
14 Customs Court, under rules prescribed by the court, the
15 parties and their attorneys shall have an opportunity to
16 introduce evidence, to hear and cross-examine the witnesses
17 of the other party and to inspect all samples and all papers
18 admitted or offered as evidence except as provided in sub-
19 section (b). The Federal Rules of Evidence shall be ap-
20 plicable to all proceedings in the Customs Court except as
21 provided in section 2639 or subsection (b) of this section.

22 “(b) In any civil action, the Customs Court may order
23 that trade secrets and commercial or financial information
24 which is privileged and confidential of a nonparty to the
25 action or of a party or information provided to the United

1 States by foreign governments or foreign persons shall not
2 be disclosed or shall be disclosed to a party or its counsel
3 or shall be disclosed to the party or its counsel only under
4 such terms and conditions as the court may provide.

5 **“§ 2643. Relief**

6 “(a) Except as provided in section 1591 of title 28,
7 United States Code, in any civil action, the Customs Court
8 may order any form of relief which is appropriate including,
9 but not limited to, declaratory judgments, orders of remand,
10 writs of mandamus and prohibition, injunctions, and money
11 judgments both for and against the United States.

12 “(b) If, in any civil action referred to in subparagraph
13 (a) of section 2640 of this title, the plaintiff both (1)
14 proves that the original decision was incorrect and (2)
15 introduces evidence as to the correct decision, but the Cus-
16 toms Court, based upon the evidence introduced by both
17 the plaintiff and the defendant, is unable to determine the
18 correct decision, the court may either permit the parties to
19 introduce additional evidence or remand the matter to the
20 Customs Service for a determination as to the correct deci-
21 sion. The order of remand shall be final and appealable
22 pursuant to sections 1541 (a) and 2601 of this title and the
23 decision after remand shall be subject to protest and judicial
24 review in the same manner and under the same procedure
25 as was the original decision.

1 **“§ 2646. Precedence of American manufacturer, producer,**
 2 **and wholesaler cases**

3 “Every case instituted under sections 1585 and 1591 of
 4 title 28 or section 516 (c) or 516 (d) of the Tariff Act of
 5 1930, as amended, shall be given precedence over other
 6 cases on the docket of the court and shall be assigned for
 7 hearing and trial at the earliest practicable date and ex-
 8 pedited in every way.”.

9 **TITLE V—COURT OF CUSTOMS AND PATENT**
 10 **APPEALS**

11 SEC. 501. Section 1541 of title 28, United States Code,
 12 is amended by—

13 (1) redesignating paragraph (b) as paragraph
 14 (c) ; and

15 (2) by inserting the following new paragraph:

16 “ (b) The Court of Customs and Patent Appeals has
 17 jurisdiction of appeals from interlocutory orders of the Cus-
 18 toms Court, or of the judges thereof, granting, modifying,
 19 refusing, or dissolving injunctions, or refusing to dissolve or
 20 modify injunctions.”.

21 SEC. 502. Section 2601 of title 28, United States Code,
 22 is amended by deleting the following from the first sentence
 23 of paragraph (b) : “which shall include a concise statement
 24 of the errors complained of”; and, by inserting a period after
 25 the word “appeal” in that sentence.

1 SEC. 503. (a) Paragraph (a) of section 2601 of title
 2 28, United States Code, is amended by adding the following
 3 new sentence: "If a timely notice of appeal is filed by a
 4 party, any other party may file a notice of appeal within
 5 fourteen days after the date on which the first notice of
 6 appeal was filed."

7 (b) The first sentence of paragraph (b) of section 2601
 8 of title 28, United States Code, as amended by this Act, is
 9 amended by inserting the following after the word "appeal"
 10 where it first appears: "or cross-appeal".

11 SEC. 504. Chapter 93 of title 28, United States Code, is
 12 amended by inserting the following new section:

13 **"§ 1546. Rules of evidence; powers in law and equity;**
 14 **exclusive jurisdiction**

15 "(a) Except as provided in section 2639 or subsection
 16 (b) of section 2641 of title 28, as contained in this Act, the
 17 Federal Rules of Evidence shall be applicable in the Court of
 18 Customs and Patent Appeals in any appeal from the United
 19 States Customs Court.

20 "(b) The Court of Customs and Patent Appeals shall
 21 possess all the powers in law and equity of, or as conferred
 22 by statute upon, a court of appeals of the United States.

23 "(c) The Court of Customs and Patent Appeals shall
 24 possess exclusive jurisdiction to review—

1 “(1) any decision of the Secretary of the Treasury
2 to deny or revoke a customs brokers’ license under sec-
3 tion 641 (b) of the Tariff Act of 1930, as amended, or

4 “(2) any action challenging an order to revoke or
5 suspend a license under section 641 (b) of the Tariff Act
6 of 1930, as amended.

7 “(d) The Court of Customs and Patent Appeals shall
8 possess exclusive jurisdiction to review any decision of the
9 Secretary of Labor or the Secretary of Commerce certifying
10 or refusing to certify workers, communities, or businesses as
11 eligible for adjustment assistance under the Trade Act of
12 1974. This jurisdiction shall not extend to any other decision
13 of the Secretary of Labor or Secretary of Commerce.

14 “No injunction or writ of mandamus shall be issued in
15 any case arising under this section.”.

16 TITLE VI—MISCELLANEOUS

17 SEC. 601. (a) The title of section 516 of the Tariff
18 Act of 1930 (46 Stat. 735) is amended to read as follows:

19 “§ 516. Suits by American manufacturers, producers, or
20 wholesalers and by adversely affected parties”.

21 (b) Subsection 516 (a) of the Tariff Act of 1930, as
22 amended (19 U.S.C. 1516 (a)), is hereby amended to read
23 as follows:

24 “(a) The Secretary shall, upon written request by an
25 American manufacturer, producer, or wholesaler, furnish

1 the appraised value, the classification, the rate or amount
2 of duty, the additional duty described in section 303 of the
3 Tariff Act of 1930, as amended (hereinafter in this section
4 referred to as 'countervailing duties'), if any, and the special
5 duty described in section 202 of the Antidumping Act,
6 1921, as amended (hereinafter in this section referred to
7 as 'antidumping duties'), if any, imposed upon any desig-
8 nated imported merchandise of a class or kind manufac-
9 tured, produced, or sold at wholesale by him, her, or it or
10 shall state whether the designated imported merchandise is
11 excluded from entry under the customs laws.

12 "If such person believes that the appraised value is
13 not correct, that the classification is not correct, that the
14 proper rate or amount of duty is not being assessed, that
15 countervailing duties or antidumping duties should be as-
16 sessed upon the particular merchandise specified in the peti-
17 tion, or that the merchandise should be excluded from entry
18 under the customs laws, he, she or it may, except as pro-
19 vided in subsection (d) of this section, file a petition with
20 the Secretary setting forth (1) a description of the mer-
21 chandise, (2) the appraised value, the classification, the
22 rate or amount of duty that he, she, or it believes proper,
23 or that he, she, or it believes that the merchandise should
24 be excluded from entry under the customs laws, and (3) the
25 reasons for his, her, or its belief (including, in appropriate

1 instances, the reasons for his or her belief that counter-
2 vailing duties or antidumping duties should be assessed.”.

3 (c) Subsection 516 (b) of the Tariff Act of 1930, as
4 amended, is hereby amended to read as follows:

5 “(b) (1) If, after receipt and consideration of a petition
6 filed as provided in subsection (a) of this section, the Sec-
7 retary decides that the appraised value of the merchandise is
8 not correct, that the classification of the article or the rate
9 or amount of duty assessed thereon is not correct, that coun-
10 tervailing duties or antidumping duties should be assessed
11 pursuant to determinations previously made under section
12 303 of the Tariff Act of 1930, as amended, or a finding previ-
13 ously issued under section 201 of the Antidumping Act,
14 1921, as amended, or that the merchandise should be ex-
15 cluded from entry under the customs laws, he or she shall
16 decide the proper appraised value or classification, rate or
17 amount of duty, whether countervailing, or antidumping
18 duties should be assessed or that entry of the merchandise
19 should be prohibited and the decision shall be immediately
20 published in the Federal Register.

21 “(A) Except for countervailing duty and antidump-
22 ing duty purposes, all such merchandise entered for
23 consumption or withdrawn from warehouse for con-
24 sumption more than thirty days after the date such
25 notice to the petitioner is published in the Federal

1 Register shall be appraised or classified or assessed as
2 to rate or amount of duty or permitted or denied entry
3 in accordance with the Secretary's determination.

4 “(B) For countervailing duty and antidumping
5 duty purposes, the determination of the Secretary under
6 this subdivision shall be effective with respect to mer-
7 chandise entered or withdrawn from warehouse for con-
8 sumption on or after the date upon which the Secre-
9 tary's determination is published in the Federal Reg-
10 ister.

11 “(2) If the Secretary decides (a) that such merchan-
12 dise is not the subject of a prior determination under section
13 303 of the Tariff Act of 1930, as amended, or a finding
14 issued under section 201 of the Antidumping Act, 1921, as
15 amended, or (b) that conditions or practices have materially
16 changed since such prior determination or finding was made
17 and that there are reasonable grounds to initiate an investi-
18 gation under section 303 of the Tariff Act of 1930, as
19 amended, or section 201 of the Antidumping Act, 1921,
20 as amended, to determine whether countervailing duties or
21 antidumping duties should be assessed on such merchandise,
22 or (c) that a prior determination under section 303 of the
23 Tariff Act of 1930, as amended, or section 201 of the Anti-
24 dumping Act, 1921, as amended, was not correct, he or she
25 shall treat the petition as a request for a proceeding under

1 section 303 of the Tariff Act of 1930, as amended, or sec-
2 tion 201 of the Antidumping Act, 1921, as amended, and
3 shall so inform the petitioner, and the procedures set forth
4 therein shall thereafter apply. A decision rendered by the
5 Secretary under this subsection to so treat the petition shall
6 not be subject to judicial review.”.

7 (d) Subsection 516 (c) of the Tariff Act of 1930, as
8 amended, is hereby amended to read as follows:

9 “(c) (1) If the Secretary decides that the appraised
10 value or classification of the articles or the rate or amount
11 of duty or the entry of merchandise under the customs laws
12 with respect to which a petition was filed pursuant to sub-
13 section (a) of this section is correct or that countervailing
14 or antidumping duties should not be imposed, he or she
15 shall so inform the petitioner.

16 “(2) If dissatisfied with the decision of the Secretary,
17 the petitioner may, except as provided in subsection (d) of
18 this section, file with the Secretary, not later than thirty days
19 after the date of the decision, notice that he, she, or it desires
20 to contest the appraised value or classification of, or rate or
21 amount of duty assessed upon, or the failure to assess counter-
22 vailing duties or antidumping duties upon, or the entry of
23 the merchandise designated in the petition.

24 “(3) Upon receipt of notice from the petitioner, the
25 Secretary shall cause publication to be made in the Federal

1 Register of his decision as to the proper appraised value or
2 classification or rate or amount of duty or that countervailing
3 duties or antidumping duties should not be assessed, or of
4 the decision to permit entry of the merchandise under the
5 customs laws and of the petitioner's desire to contest, and
6 shall thereafter furnish the petitioner with such information
7 as to the entries and consignees of such merchandise, en-
8 tered or denied entry after the publication of the decision
9 of the Secretary at such ports of entry designated by the peti-
10 tioner in his or her notice of desire to contest, as will enable
11 the petitioner to contest the entry of the merchandise into
12 the United States or the appraised value or classification of,
13 or rate or amount of duty imposed upon or failure to assess
14 appropriate countervailing duties or antidumping duties
15 upon, such merchandise in the liquidation of one such entry
16 at such port. The Secretary shall direct the customs officer
17 at such ports to notify the petitioner by mail immediately
18 when the first of such entries is liquidated.

19 “(4) Any person (except a person specified in section
20 514(b) (1) of the Tariff Act of 1930, as amended) ad-
21 versely affected or aggrieved by a decision of the Secretary
22 made pursuant to subsection (b) (1) or (c) of this section,
23 in response to the petition of an American manufacturer, pro-
24 ducer, or wholesaler as provided in subsection (a) of this

1 section is entitled to judicial review as provided in subsection
2 (i) of this section.”.

3 (e) Subsection 516(d) of the Tariff Act of 1930, as
4 amended, is hereby amended to read as follows:

5 “(d) (1) Within thirty days after a determination by
6 the Secretary under section 201 of the Antidumping Act,
7 1921, as amended, that a class or kind of foreign merchan-
8 dise is not being, or is not likely to be sold in the United
9 States at less than fair value, or under section 303 of the
10 Tariff Act of 1930, as amended, that a bounty or grant is
11 not being paid or bestowed, and only within such time, an
12 American manufacturer, producer, or wholesaler of merchan-
13 dise of the same class or kind as that specified in the deter-
14 mination of the Secretary may file with the Secretary a
15 written notice of a desire to contest the determination. Upon
16 receipt of such notice the Secretary shall cause publication to
17 be made in the Federal Register of the notice of desire to
18 contest the determination. Within thirty days after publica-
19 tion, the petitioner may commence an action in the United
20 States Customs Court contesting the determination.

21 “A petitioner may also challenge, pursuant to subsection
22 1 of this section, (1) the rejection of a petition by the Secre-
23 tary as containing insufficient information or as failing, as a
24 matter of law, to allege dumping or a bounty or grant, or
25 (B) the discontinuance, under section 201 of the Antidump-

1 ing Act, 1921, as amended, of an antidumping investigation.
2 If the court determines that the Secretary erred in rejecting
3 the petition, the court shall remand the matter to the Secre-
4 tary in order to permit an investigation to be conducted.

5 “(2) Within thirty days after a determination by the
6 United States International Trade Commission—

7 “(A) under section 201 of the Antidumping Act,
8 of 1921, as amended, that an industry in the United
9 States is not being or is not likely to be injured or is not
10 prevented from being established, by reason of the im-
11 portation of a class or kind of merchandise into the
12 United States at a price which is or is likely to be less
13 than its fair value, or

14 “(B) under section 303 of the Tariff Act of 1930,
15 as amended, that an industry in the United States is not
16 being or is not likely to be injured or is not prevented
17 from being established by reason of the importation into
18 the United States of merchandise, otherwise free of
19 duty, on which a bounty or grant is being paid or
20 bestowed, and only within such time, an American man-
21 ufacturer, producer, or wholesaler of merchandise of the
22 same class or kind as that specified in the determination
23 of the Commission may file with the Commission a writ-
24 ten notice of a desire to contest the determination. Upon
25 receipt of the notice the Commission shall cause publica-

1 tion to be made in the Federal Register of the notice of
2 desire to contest the determination. Within thirty days
3 after publication, the petitioner may commence an
4 action in the United States Customs Court contesting
5 the determination.

6 “(3) (A) Any suit instituted pursuant to paragraph
7 (1) or (2) of this section shall be subject to judicial review
8 as provided in section 2640 (c) of title 28, United States
9 Code.

10 “(B) Any person adversely affected or aggrieved by
11 a decision of the Secretary or the Commission of a kind that
12 is appealable by an American manufacturer, producer, or
13 wholesaler pursuant to subsection (d) (1) or (d) (2) of
14 this section, is entitled to judicial review as provided in sub-
15 section (i) of this section.”.

16 (f) Subsection 516 (g) of the Tariff Act of 1930, as
17 amended, is hereby amended to read as follows:

18 “(g) If the cause of action is sustained in whole or
19 in part, on the merits and without remand for further
20 proceedings by a decision of the United States Customs
21 Court or of the United States Court of Customs and Patent
22 Appeals or of the United States Supreme Court: (1)
23 merchandise of the character covered by the published
24 determination of the Secretary or of the Commission which
25 is entered for consumption or withdrawn from warehouse

1 for consumption after the date of publication of the court
2 decision in the weekly Customs Bulletin shall be subject to
3 appraisement, classification, assessment of duty and entry
4 in accordance with the final judicial decision in the action:
5 *Provided, That, in the event a judicial decision relating to*
6 (a) a decision of the Secretary of the Treasury under section
7 201 of the Antidumping Act, as amended, or (b) a decision
8 of the Secretary under section 303 of the Tariff Act of 1930,
9 as amended, relating to merchandise which is free of duty,
10 no additional duties shall be assessed unless and until the
11 Commission makes the affirmative determinations required
12 under subsection (b) (1) of section 303 of the Tariff Act
13 of 1930, as amended, or section 201 (a) of the Antidumping
14 Act, as amended, whichever is applicable; and (2) the
15 liquidation of entries covering such merchandise so entered
16 or withdrawn shall, to the extent the court overrules the
17 determination of the Secretary or of the Commission and
18 from the time of such publication of the decision, be sus-
19 pended until final disposition is made of the action. Upon
20 final disposition of the action, all entries the liquidation of
21 which was or should have been suspended shall be liquidated,
22 or if necessary, reliquidated in accordance with the final
23 decision.”.

24 (g) Section 516 of the Tariff Act of 1930, as amended,
25 is amended by adding the following new subsection (i) :

1 “(i) (1) Any person adversely affected or aggrieved
2 by a decision or determination of the Secretary or the
3 United States International Trade Commission that is sub-
4 ject to judicial review under subsection (c) (4) (b) or
5 (d) (C) (2) of this section, may file an action for such
6 review in the Customs Court. Such action must be filed with-
7 in thirty days of the decision or determination, or, if notice
8 of the decision is required to be published, within thirty
9 days of publication, whichever is later.

10 “(2) Upon the filing of an action for judicial review
11 under subsection (1) of this subsection, the Customs Court
12 shall review the record of the decision of the Secretary
13 or the United States International Trade Commission. The
14 Court may affirm the decision or order that the entire mat-
15 ter be returned for further consideration, but the Court may
16 not modify the decision.

17 “(3) In any action for limited judicial review under
18 this section, the findings of fact of the Secretary or of the
19 Commission shall be conclusive upon the Court and the
20 parties. The decision shall be affirmed unless the Court
21 determines that it was arbitrary, capricious, or contrary
22 to the applicable statute.

23 “(4) Upon application of any party, the Court may
24 make the action a preferred cause on its docket, but the
25 Court may not suspend the effectiveness of the decision

1 until final disposition of the action, including any appeals.

2 “(5) Except as specifically provided in subsections (c)
3 and (d) of this section, the limited remedy provided in this
4 subsection constitutes the exclusive form of judicial review
5 of decisions of the Secretary and the United States Interna-
6 tional Trade Commission under sections 303 and 516 of the
7 Tariff Act of 1930, as amended, and section 201 of the Anti-
8 dumping Act, 1921, as amended.”.

9 (h) The amendments specified in this section shall
10 become effective on the day following the date of its enact-
11 ment: *Provided*, That nothing contained in this Act shall
12 be construed to require the dismissal of any action otherwise
13 validly brought before that date under former subsection
14 1582 (b) of title 28 of the United States Code to contest
15 any failure of the Secretary of the Treasury to assess counter-
16 vailing duties or antidumping duties, pursuant to subsection
17 516 (c) of the Tariff Act of 1930, as amended (19 U.S.C.
18 1516 (c)), due to negative injury determinations by the
19 United States International Trade Commission under section
20 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) ,
21 or under section 201 of the Antidumping Act of 1921, as
22 amended (19 U.S.C. 160) .

23 SEC. 602. (a) Paragraph (b) (1) of section 514 of the
24 Tariff Act of 1930, as amended, is amended by deleting the
25 last sentence of the paragraph and by inserting in lieu there-

1 of the following new provision: "Except as provided in sec-
2 tions 485 (b) , 516, and 557 (b) of the Tariff Act of 1930,
3 as amended, protests may be filed with respect to mer-
4 chandise which is the subject of a decision specified in sub-
5 section (a) of this section by (a) the importers or consign-
6 ees shown on the entry papers; (b) any person paying
7 any charge or exaction; (c) any person seeking entry or de-
8 livery; (d) any person filing a claim for drawback; or, (e)
9 any authorized agent of any of the persons specified in (a)
10 through (d) .

11 "A surety may file a protest if it has paid all or part of
12 the duties due and the insured has failed to file a protest.
13 Notwithstanding subparagraph (2) of this subsection, a pro-
14 test may be filed by a surety only within ninety days of the
15 date of liquidation or ninety days from the date of notice of
16 delinquency, whichever is later: *Provided*, That the surety
17 certifies in the protest that it is not filing the protest on be-
18 half of another party who is entitled to file a protest but
19 because of mistake, inadvertence or misunderstanding failed
20 to file a protest within the time specified in subparagraph
21 (2) of this subsection. If the protest filed by the surety is
22 granted or if the protest is denied and the surety institutes
23 an action in the Customs Court, any recovery of the surety
24 shall be limited to the amount of duties it paid."

1 (b) Paragraph (a) of section 514 of the Tariff Act of
2 1930, as amended, is amended by inserting at the end of the
3 first sentence, the following: "A protest against a liquidation
4 does not include a protest against the other types of decisions
5 specified in this paragraph."

6 TITLE VII—TECHNICAL AND CONFORMING
7 AMENDMENTS

8 SEC. 701. The first sentence of paragraph (a) of section
9 250 of the Trade Act of 1974 is amended by deleting all
10 that appears after "United States" and by inserting in lieu
11 thereof "Court of Customs and Patent Appeals".

SEC. 702. (a) The second sentence of the second para-
graph of paragraph (b) of section 641 of the Tariff Act of
1930, as amended, is amended by deleting all that appears
after "filing," and before "sixty," and by inserting in lieu
thereof "the Court of Customs and Patent Appeals, within".

(b) The second paragraph of paragraph (b) of section 641 of the Tariff Act of 1930, as amended, is amended by adding the following new sentence immediately after the third sentence of that paragraph "For purposes of this paragraph, all relevant rules prescribed in accordance with sections 2072 and 2112 of title 28, United States Code, shall be applicable to the Court of Customs and Patent Appeals."

1 SEC. 703. Section 1340 of title 28, United States Code,
2 is amended by adding the following new sentence: "The
3 Customs Court shall possess jurisdiction over any civil ac-
4 tion, not within its exclusive jurisdiction, arising under any
5 Act of Congress providing for revenue from imports or
6 tonnage upon transfer from a district court as provided in
7 sections 1592 and 1594 of title 28, United States Code."

8 SEC. 704. Section 1355 of title 28, United States
9 Code, is amended by adding the following new sentence:
10 "The Customs Court shall have jurisdiction of any such
11 action or proceeding upon transfer from a district court as
12 provided in section 1592 of title 28, United States Code."

13 SEC. 705. Section 1356 of title 28, United States Code,
14 is amended by adding the following new sentence: "The
15 Customs Court shall have jurisdiction of any such action
16 or proceeding upon transfer from a district court as provided
17 in section 1592 of title 28, United States Code."

18 SEC. 706. Section 751 of title 28, United States Code,
19 is amended by adding the following new paragraph (f) :

20 "(f) When the Customs Court is sitting in a judicial dis-
21 trict, other than the Southern and Eastern Districts of New
22 York, the clerk of each district court, or an authorized deputy
23 clerk, with the approval of the district court, shall act in
24 the district as clerk of the Customs Court, in accordance with
25 rules and orders of the Customs Court, for all purposes re-

1 lating to the case when pending before that court.”.

2 SEC. 707. Section 1491 of title 28, United States Code,
3 is amended by inserting after the word “suits” where it first
4 appears in the first sentence of the second paragraph of that
5 section the following: “within the exclusive jurisdiction of
6 the Customs Court, or”.

7 SEC. 708. Section 2414 of title 28, United States Code,
8 is amended by inserting after “court” in the first sentence
9 of the first paragraph of that section the following “or Cus-
10 toms Court”.

11 SEC. 709. Section 1919 of title 28, United States Code,
12 is amended by inserting after the word “court” where it first
13 appears, the following: “or the Customs Court”.

14 SEC. 710. Chapter 125 of title 28 is amended by adding
15 a new section thereto as follows:

16 **“§ 1963a. Registration of judgments of the Customs Court**

17 “A judgment in an action for the recovery of money
18 or property entered by the Customs Court which has become
19 final by appeal or expiration of time for appeal may be
20 registered in any district by filing therein a certified copy
21 of such judgment. A judgment so registered shall have the
22 same effect as a judgment of the district court of the district
23 where registered and may be enforced in like manner.

24 “A certified copy of the satisfaction of any judgment
25 in whole or in part may be registered in like manner in any
26 district in which the judgment is a lien.”.

1 SEC. 711. Section 1331 of title 28, United States Code,
 2 as amended, is amended by adding the following new sen-
 3 tence: "The district courts shall not possess jurisdiction
 4 pursuant to this section over any matter within the exclu-
 5 sive jurisdiction of the Customs Court."

6 SEC. 712. Paragraph (a) of section 2602 of title 28,
 7 United States Code is amended by deleting all that appears
 8 after "appeals" and before "shall" and by inserting, in lieu
 9 thereof, the following: "arising under sections 1585 and
 10 1591 of this title or section 516 (c) or 516 (d) of the Tariff
 11 Act of 1930, as amended".

12 SEC. 713. Section 3 of the Act of July 5, 1884 (23
 13 Stat. 119), is amended to read as follows: "The decision
 14 of the Commissioner of Customs on all questions of inter-
 15 pretation growing out of the execution of the laws relating
 16 to the collection of tonnage tax and to the refund of such
 17 tax when collected erroneously or illegally, shall be subject
 18 to judicial review in the Customs Court as provided in title
 19 28, United States Code: *Provided*, That, in the Customs
 20 Court, and upon appeal, if any, from that court, the findings
 21 of the Commissioner as to any fact, if supported by sub-
 22 stantial evidence, shall be conclusive."

23 EFFECTIVE DATE

24 SEC. 714. (a) The provisions of section 2631 as con-
 25 tained in section 402 of this Act shall become effective as to

1 entries liquidated on and after the date of enactment.

2 (b) All other provisions of this Act shall become effec-
3 tive upon the date of enactment: *Provided*, That, this Act
4 shall not cause the dismissal of any action instituted prior
5 to the date of enactment under the then existing jurisdictional
6 statutes concerning the Customs Court or the Court of Cus-
7 toms and Patent Appeals.

A BILL

To clarify and revise various provisions of title 28 of the United States Code relating to the judiciary and judicial procedure regarding judicial review of international trade matters, and for other purposes.

By Mr. DeCONCINI

APRIL 7 (legislative day, FEBRUARY 6), 1978

Read twice and referred to the Committee on the
Judiciary